

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 0334

June 14, 2016

Douglas H. Zamelis, Esq.
7629A State Highway 80
Cooperstown, NY 13326

Re: Order on Consent
R4-2014-1226-172
Waste Recovery Enterprises, LLC

Dear Mr. Zamelis:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$3000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: P. Wyckoff



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
Article 23

Order on Consent
File No. R4-2014-1226-172

- by -

Waste Recovery Enterprises, LLC
P.O. Box 2189
Sydney, NY 13838

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department or DEC") has administrative jurisdiction pursuant to Environmental Conservation Law ("ECL") Title 27 of Article 23 to regulate surface mining and reclamation.
2. Respondent, Waste Recovery Enterprises, LLC, ("WRE") is a limited liability corporation of the State of New York which operates a mine known as Valley View Mine ("mine"), located on Valley View Road in the Town of Unadilla, Otsego County, New York ("site"). Respondent's mailing address is: P.O. Box 2189, Sidney, New York 13838. Respondent has a permit from the Department to operate the mine which was issued on March 28, 2006 and expired on March 27, 2011 (ID # 4-3662-00002/00001). The permit is currently extended under the State Administrative Procedure Act ("SAPA") to mine a bluestone quarry known as the Valley View Mine ("mine").
3. Department staff inspected the mine on June 14, 2012, June 22, 2012, October 29, 2013, November 25, 2014, August 5, 2015, and May 18, 2016.

Violations

4. At the time of the November 25, 2014 inspection, Department staff observed water leaving the Life of Mine ("LOM") by infiltrating through the dam built on the west side of the southern retention basin and flowing toward Valley View Road and the river. Erosion damage is evident on the east side of the cobble dam where the water is seeping through the cobbles. This unpermitted discharge was first observed during the June 14, 2012 inspection as water left the site through a large breach in the bank of the retention pond. The breach most likely occurred during Hurricanes Lee and Irene in September of 2011 and had not been repaired until Department staff required the breach be filled to stop the illegal discharge almost nine months later. The dam was inspected on June 22, 2012, and water was still observed to discharge from the site by seeping through the cobble material used to re-construct the dam. Illegal discharges of water seeping through the dam were observed during the October 29, 2013, and November 25, 2014 inspections.

5. Respondent was notified in the Notice of Violation from November 2014 that the breach in the retention pond must be repaired. As of the August 5, 2015 inspection, the breach has still not been properly repaired.

6. Special Condition #4 of Respondent's Mined Land Reclamation Permit provides that *"There shall be no natural swales or channels or constructed features such as ditches, pipes, etc., that are capable of discharging waters to any offsite areas or to any areas outside the limits of the Life of Mine except those explicitly described and shown in the narrative and graphic portions of the approved Mined Land Use Plan. All silt laden water and storm water generated on, or running across the site shall be retained within the approved project area. The permittee must comply with all applicable State Pollutant Discharge Elimination System (SPDES) permit requirements and provide necessary notifications for off-site point source discharges."*

7. At the time of the November 25, 2014 inspection water was observed leaving the LOM by infiltrating through the dam built on the west side of the southern retention basin and flowing

8. Special Condition #7 of Respondent's Mined Land Reclamation Permit provides that *"The permittee shall provide permanent markers such as stakes, posts or other devices acceptable to the Department to identify and delineate the permit area, as outlined on the approved Mining Plan Map. These markers are to be installed prior to the start of mining and shall be maintained for the duration of the permit term."*

9. At the time of the November 25, 2014 inspection, there were no markers or stakes in place to identify and delineate the permit area, as outlined in the approved Mining Plan Map.

10. Special Condition #12 of Respondent's Mined Land Reclamation Permit provides that *"There shall be no importation, storage, disposal and/or processing of materials (of any kind) originating from outside the limits of the life of mine without first applying for and obtaining a modification to this permit."*

11. At the time of the November 25, 2014 inspection, Department staff observed that the large scrap wood pile on the WRE solid waste facility (located south of the mine site) had expanded across the Life of Mine boundary. The southern limit of the LOM roughly corresponds to a utility pole on the east side of the mine site and the wood pile is north of the LOM boundary.

12. Special Condition #13 of Respondent's Mined Land Reclamation Permit provides that *"The 1.2+/- acre area outside the LOMB shown on the September 19, 2005 Mining Map shall be reclaimed by September 15, 2006."*

13. At the time of the November 25, 2014 inspection, portions of the area set forth in Special Condition #13 of Respondent's Mined Land Reclamation Permit which were required to be reclaimed by September 15, 2006, were not reclaimed to the satisfaction of the Department.

14. ECL 71-1305(2) provides that it shall be unlawful for any person to: *“Violate any of the provisions of or fail to perform any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto.”*

15. Respondent’s violation of Special Conditions numbers 4, 7, 12 and 13 of its Mined Land Reclamation Permit are violations of ECL 71-1305(2).

16. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, has consented to the issuance and entry of this Order, and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Penalty

With respect to the aforesaid violations, a civil penalty in the amount of EIGHT THOUSAND DOLLARS (\$8,000) of which THREE THOUSAND DOLLARS (\$3,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance FIVE THOUSAND DOLLARS (\$5,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

II. Compliance Schedule

Respondent shall commence implementation of the activities described in the attached Compliance Schedule, which is an enforceable part of this Order, in accordance with its terms. Respondent shall meet the schedule therein.

III. Force Majeure

If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe or other condition which is not caused by the negligence or misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall make its best effort to comply nonetheless and shall, within seventy-two hours (unless notice is required sooner by State or Federal law), notify the Department by telephone and in writing, pursuant to the communications provision of this Order, after it obtains knowledge of any such condition or event and request an appropriate extension or modification of this Order.

IV. Reports

All reports required herein shall be made to the Region 4 office of DEC, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Natural Resources Supervisor.

V. Access

Respondent shall allow duly authorized agents and employees of DEC access to any facility, site, or records owned, operated, controlled, or maintained by Respondent, without prior notice, at such times as may be desirable or necessary, and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

VI. Indemnification

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees, for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, its employees, servants, agents, successors or assigns.

VII. Successors and Assigns

The provisions of this Order shall be deemed to bind Respondent, its agents employees, successors, and assigns, and all persons, firms, and corporations acting under or for Respondent.

VIII. Effective Date

The effective date of this Order shall be the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's Counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or her designee signs it.

IX. Default

The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification or approval issued to Respondent by DEC.

X. Entire Agreement; Modification

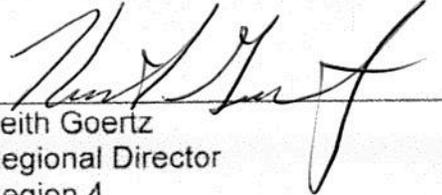
This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

XI. Other Rights

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

DATED: *June 14* 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of
Environmental Conservation

BY: 
Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Waste Recovery Enterprises, LLC

SIGNED: Denton L. Reed

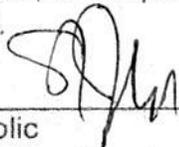
TITLE: MANAGER

DATE: June 7, 2016

STATE OF New York

COUNTY OF Otsego) ss.:

On the 7th day of JUNE in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Denton L. Reed personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
Qualified in the County of:
My Commission Expires:

Stephen H. Judd
Notary Public, State of New York
No. 02JU4734519
Qualified in Otsego County
Commission Expires January 31, 2019

Schedule of Compliance

1. Within 7 days of the effective date of this Order, Respondent shall repair or replace the remnant topography of the retention basin that was breached by the 2011 flood event. The repair of the remnant topography must be constructed with earthen material that will not allow water to percolate through the repaired area of the retention basin. All disturbed areas must receive an application of 6" of topsoil, seed, fertilizer, lime according to a pH test, and mulch according to the approved reclamation plan.

There shall be no constructed feature (e.g. swale or ditch) capable of discharging waters from the Life of mine. The overflow structure, where it was constructed within the Life of Mine boundary, must be diked with earthen material to prevent a discharge.

Any constructed overflow structure or spillway constructed outside of the Life of Mine boundary may remain in place.

2. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a TR-55 analysis of the site showing the volume required to retain the 100 year storm event with fully reclaimed site conditions. If the analysis shows that the retention basis is undersized, the basin shall be resized within 14 days of the submission of TR-55 analysis.
3. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a sketch map identifying the location of stormwater controls to be implemented on the site. The Google Earth 2015 or NYS GIS clearinghouse 2014 orthophotos can be used for the base map. The map must include:
 - A retention basin that is capable of retaining the 100 year 24 hour storm (i.e. the existing basin or a resized basin).
 - The stretches of drainage channel that will be stabilized, and identify the methods to be used to stabilize those channels.
 - Where existing channels are unstable, gullies must be improved utilizing "lined waterway or outlet" specifications from the NYS Standards and Specifications Erosion and Sediment Control (aka "The Blue Book"), or another Department approved method.
 - Check dams or other approved structures, if needed, to slow the velocity of flow, per the Blue Book specifications.
 - "Live Stakes" from the Blue Book can be used to enhance stabilization.
 - Diffuse flow (e.g. no gullies or channels) over the vegetated floor of the mine where water has the ability to percolate into the ground is acceptable.
 - Existing stable channels (e.g. 100% vegetated banks with no signs of channel bank or bed erosion) are acceptable.

- Show where the access road will remain after reclamation. (The currently approved reclamation plan shows the entire site reclaimed with vegetation with no access road).
4. Within 45 days of the effective date of this Order, all silt that has collected in the basin that impairs percolation into the gravel will be mucked out and may be used in reclamation. All disturbed slopes of the basin shall be reclaimed according to the approved reclamation plan.
 5. By September 15, 2016, all final reclamation work must be completed, including the following:
 - All product stockpiles, metals, equipment, garbage (eg. tires) or waste will be removed from the site.
 - All drainage gullies in the side slopes and on the floor of the mine shall be stabilized.
 - 6" of topsoil must be applied over all unreclaimed areas.
 - Within 48 hours of the application of soil, apply seed, fertilizer, lime according to a pH test, and mulch according to the approved reclamation plan. The Department recommends that the seed mixture contain at least 2 legumes.
 - Reapply seed with a seed mixture that contains 2 legumes, fertilizer, and lime according to a pH test, and mulch any planted areas that have not achieved 75% vegetative cover.
 - The access road must be stabilized with a crown and rip-rap lined ditches, where needed. The entire access road must be surfaced with 6" of stone.
 6. The vegetation must reach the regulatory requirement of 75% vegetative cover by August 27, 2017. The MLRS will subsequently conduct a reclamation inspection. If the vegetation does not meet the required cover, the MLRS will require the application of additional fertile soil, seed, fertilizer and mulch.